Life Insurance Corporation of India

Vs

India Automobiles and Co. and Others

Civil Appeal No. 1514 of 1979

(S. Ranganathan, K. N. Saikia JJ)

01.08.1990

JUDGMENT

S. RANGANATHAN, J. -

1. A very interesting question comes up for consideration in this appeal. The question to be ultimately decided falls within a very narrow compass but it is necessary to set out the facts leading to the present appeal at some length.

2. The property, which is the subject matter of the present dispute, originally formed part of an extent of land situated on Mount Road, Madras, bearing door Nos. 2 and 3 and measuring 41 grounds and 2005 sq. ft. It belonged to several co-owners. These co-owners had leased out the properties under two lease deeds in favour of M/s. India Automobiles, which was then the sole proprietory concern of the one of themselves, Ganshyamdas Girdhardas (GG), but was converted subsequently, in 1961, into a partnership concern of GG and his four sons. The firm and its partners are hereinafter compendiously referred to as 'the tenants'. The first lease (EX. P-1) was dated September 22, 1947 and related to door No. 2 (Item 1 in Schedule A to the plaint). This was a property comprising of an area of 4 grounds and 151 square feet with certain buildings thereon. The rent for the premises was Rs. 150 per month. The second lease deed (Ex. P-2), dated October 3, 1947, relating to door No. 3 (Item 2 in Schedule A to the plaint) covered an area of 8700 sq. ft. and some building thereon. The rent as per lease deed was Rs. 200 per month.

3. On July 30, 1953, all the co-owners of the property (including GG) sold the property to the United India Life Assurance Company and the New Guardian of India Life Insurance Company Ltd., in 1956, the Life Insurance Corporation of India (LIC) stepped into the shoes of these two insurance companies and became the owner of the property.

4. On July 20, 1965, the LIC moved two applications (being H.R.C. Nos. 3310 and 3311 of 1965) in the court of the Rent Controller (Sri A. Varadarajan who later became a Judge of this Court) for fixation of a "fair rent" for each of the premises. The fair rent claimed was computed at Rs. 2399.03 per month in respect of Item 1 as against the rent of Rs. 150 p.m. fixed under the lease deed. In respect of Item 2 the fair rent claimed was Rs. 3266.50 as against Rs. 200 p.m. payable under the lease deed. The defendants (GG and his sons) filed their objections to the above application. They claimed that, under both the lease deeds, what had been leased out to them was only a vacant land and that the superstructure had been built by them. They claimed, therefore, that they were entitled to relief under the Madras City Tenants' Protection Act and that the Rent Control Court had no jurisdiction to fix a fair rent.

5. The Rent Controller accepted the above argument so far as Item 1 was concerned. So far as Item 2 was concerned, it appears that, at the time of the hearing, it was conceded before the Rent Controller that the respondents were tenants of the entire properties covered by the lease deed and that they had not constructed any of the premises thereupon. In view of this the Rent Controller dismissed H.R.C. No. 3310 of 1965 relating to Item 1 and, in H.R.C. No. 3311 of 1865, fixed the fair rent in respect of Item 2 at Rs. 1452 p.m. The order of the Rent Controller was dated March 9, 1966.

6. There were appeals to the Court of Small Cases. In respect of Item 1 in H.R.A. 534 of 1966, the court, on a perusal of the sale deed dated July 30, 1953 filed by the LIC before it, came to the conclusion that the buildings on the land leased under Ex. P-1 had also been conveyed to the LIC and that the LIC was entitled to seek fixation of fair rent in respect of this premises also. The fair rent fixed by the Rent Controller at Rs. 994 p.m. was upheld. The order of the Rent Controller in respect of Item 2 was also upheld. It may be mentioned here that, even in certain earlier proceedings for fixation of fair rent and eviction (H.R.C. No. 867 of 1973 and H.R.C. No. 2557 of 1964), it has been held by the Rent Controller that Item 1 (door No. 2) belonged to the LIC but his order of eviction had been set aside by the appellate court on some other ground. In the circumstances, the Court of Small Causes, in the appeals now being referred to (H.R.A. No. 534 of 1966), did not treat the earlier decision as res judicata but came independently to the same conclusion that Item No. 1 belonged to the LIC. This was on April 19, 1967. The tenants filed revision petitions against the order of the Court of Small Causes but these were dismissed on November 20, 1968.

7. After the civil revision petitions by the tenant were dismissed, the LIC filed C.S. No. 64 of 1969 on the original side of the Madras High Court against the tenants for recovery of arrears of rent on the basis of the fair rents fixed, which were computed at Rs. 98,250.97 in respect of the two items of property. Further interest at the rate of 12 per cent thereon from date of plaint to the date of decree and at 6 per cent thereafter till the date of realisation was also claimed.

8. It may be mentioned here that the tenant filed C.S. No. 87 of 1972 claiming protection under the Madras City Tenants' Protection Act but this suit and further appeals therefrom have been dismissed. Turning now to C.S. No. 64 of 1969 (which has disposed of along with C.S. No. 87 of 1972 by a common judgment dated October 23, 1972) the content urged on behalf of the tenants was that, since the subject matter of the lease under Ex. P-1 was only a vacant site, the Rent Controller had no jurisdiction to fix the fair rent in respect thereof and that, therefore, the claim in the suit for arrears of rent, based on the Rent Controller's order in respect of the premises covered by Ex. P-1 had to fail. The court addressed itself to this question. It came to the conclusion that Ex. P-1 did not, in law, create a valid lease between the co-owners and the tenants. After referring to the terms of the sale deed (Ex. P-3) the superstructure constructed on the land was held to have been conveyed to the vender under the sale deed dated July 30, 1953 and to have thus vested in the LIC. The Rent Controller was therefore, held to have had jurisdiction to fix the fair rent in respect of the premises. It was, therefore, held that the plaintiff's claim in the suit should succeed. The suit was decreed accordingly.

9. The tenants filed an appeal being O.S.A. No. 62 of 1973. The appellate bench confirmed the decree in respect of Item 2 subject to certain modification which are not here relevant. However, so far as Item 1 was concerned, the appellate bench vacated the decree passed by the trial court. It held that there was a valid lease between the quondam owners and the tenants under Exs. P-1 and P-2. Having regard to the express recitals in Ex. P-3, the appellate bench held that it was impossible to hold that the buildings, which admittedly belonged to the defendants and had been constructed by

them on the vacant land taken on lease under Ex. P-1, ever were or could be the subject matter of the sale under Ex. P-3; In view of this finding, it was held that the Rent Controller had no jurisdiction to entertain the application for fixation of fair rent in respect of the property which was only a vacant piece of land. In consequence, it was held, the LIC could not maintain the suit for recovery of rent based on the order made by the statutory tribunal under the Rent Controller Act and claim the difference between the so called fair rent and the contract rent. The claim of the LIC for recovery of Rs. 39,224.71, as arrears of rent, in respect of Item 1 was thus held to be not maintainable, O.S.A. No. 62 of 1973 was, therefore, allowed to that extent. The present appeal, by special leave granted on July 3, 1979, is from the order of the Division Bench rejecting the appellant's claim for arrears of rent in respect of Item 1 of the property set out in Schedule A to the plaint based on the difference between the fair rent fixed by the Rent Controller and the rent payable therefore under Ex. P-1.

10. The questions to be decided in this appeal, on the above facts, boil down to these : (1) Was the LIC the vendee only of a vacant piece of land with no title to the buildings standing on the site in Item 1 ? (2) Is it open for the tenants to contend that the order of the Court of Small Causes in the earlier rent control proceedings deciding to the contrary and fixing the fair rent of Item 1 at Rs. 994 p.m. should be completely ignored as an order passed totally without jurisdiction, although it has become final as between the parties ? Two interesting aspects may be pointed out in regard to these two questions. The first is that if either question is answered in the negative, the other will not arise for consideration and the appeal will have to be allowed. But an affirmative answer to either question will necessitate an answer to the other. The second is that, though the claim in issue before us in only a money claim for arrears of rent, any decision given by us, based as it will have to be, on the issue whether the LIC owns the superstructure or not and whether the tenants are the lessees only of vacant land or of both and and buildings, will have repercussions not only on the claim in this suit (which by now has accumulated to more than Rs. 3 lakhs) but also on any other proceedings by way of ejectment or otherwise which the LIC may have in contemplation against the tenants. The decision in this appeal will, therefore, be of great moment for the LIC.

11. So far as the first question is concerned, we have not doubt that the Division Bench of the High Court has come to the correct conclusion. In our view, the conclusion of the learned Single Judge that the lease Ex. P-1, executed by the co-owners of the property in favour of one of them, was invalid, was erroneous. Section 5 of the Transfer of Property Act, 1882, clearly envisaged transfers of property by a person to "one or more living persons or to himself, or to himself and one or more other living persons." Whatever may be the position, in spite of this provision, in respect of a purposed transfer by a person to himself alone (which is very often the position in the case of trusts) - Which was considered by the House of Lords in Rye v. Rye ((1962) AC 496 : (1962) 1 All ER 146) there is no reason to hold that a contract between a person with himself and others is invalid. The Division Bench, we think, has rightly distinguished the decisions in Girish Chandra v. Srinath (3 CLJ 141 : ILR 32 Cal 567) and Rye v. Rye ((1962) AC 496 : (1962) 1 All ER 146). The observations of Lord Denning, extracted by the learned Judges, are quite apposite to the situation in the present case.

12. Once this objection is out of the way, the question is whether the constructions put upon the leased land by the lessees formed part of the property conveyed to the LIC. Sri Parasaran pointed out that they did not and drew our attention to subsequent correspondence between the parties to show that even the LIC had not claimed at any stage any rent in respect of the superstructures (apart from the contractual rent, which was in respect of the land) and that both parties have all along been proceeding on the footing that the superstructure on Item 1 belonged to the lessees. This appears to

be correct but it cannot be conclusive of the rights of the parties. We have therefore gone carefully into the terms of Ex. P-1 and Ex. P-3. They clearly make out that the superstructures put up by the lessee under Ex. P-1 were not included in the property conveyed under the terms of Ex. P-3 and that, whatever may be the rights of the LIC to evict the tenant with liberty to demolish the superstructure on the termination of the lease, it had no property in the superstructure so long as the lease subsisted. We therefore, answer the first question posed by us in the affirmative.

13. This brings, us then, to the second, the really crucial, question posed earlier viz. whether despite the above conclusion, we are precluded, by principles of or analogous to, res judicata, from going behind the findings to the contrary given in the earlier rent control proceedings by the Court of Small Cases which have become final on the dismissal of the CRP filed there against.

14. Sri T. S. Krishnamurthy Iyer, learned counsel for the appellant, submitted that the courts now are precluded fro going behind the findings of the Court of Small causes in the earlier proceedings. He conceded that no legal consequences can flow from a totally void order (see Kiran Singh v. Chaman Paswan ((1955) 1 SCR 177, 121 : AIR 1954 SC 340). He also conceded that there may be a difference in principle between a civil court and a court of limited jurisdiction. While the former has an inherent jurisdiction to decide a question raised about its own jurisdiction and such a decision cannot be challenged in another court after it has become final [see Bhatia Cooperative Housing Society Ltd. v. D. C. Patel ((1953) SCR 185 : AIR 1953 SC 16) and K. S. Nageswara Ayyar v. S. Ganesa Ayyer (AIR 1942 Mad 675 (2) : (1942) 2 MLJ 198)] the letter is strictly confined to the terms of the statute creating it. But, he submitted even the decision of a tribunal or a court of limited jurisdiction cannot be called in question so long as it acts within the scope of the jurisdiction conferred on it by the relevant statutes. He, therefore, invited us to peruse the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as 'the Rent Control Act'). Under the said Act, he pointed out a petition for fixation of fair rent under Section 4 could be filed by either a landlord or a tenant (Raval & Co. v. K. G. Ramachandran ((1974) 1 SCC 424)). This is what the LIC purported to do when it filed H.R.C. Nos. 3310 and 3311 of 1964. When a petition under Section 4 is filed, the Rent Controller, on the language or Section 4 has to decide : (1) whether the applicant is a tenant in, or landlord of the building and (2) what the fair rent of the premises should be in accordance with the provisions of the Act. In the present case both the points had been put in issue. The respondents denied that the LIC was the landlord or they the tenants in respect of the property. They claimed to be the owner of the superstructure and admitted tenancy only in respect of the site. The Rent Controller and, on appeal, the Court of Small Causes were therefore, called upon to give their decision of this question which was completely within their statutory jurisdiction and this decision certainly constitutes res judicata between the parties : see also, Explanation VIII to Section 11 of the Code of Civil Procedure. At any rate, it is not open to one of the parties to contend that the decision given by the Court of Small Causes, which has become final between the parties, is a total nullity which can be completely ignored. It was, therefore, not open to the High Court to entertain a collateral attack on the validity or binding nature or correctness of the order of the Court of Small Causes and to consider and determine afresh the issue as to whether the LIC is the owner of the premises as claimed or not.

15. In support of his contention, counsel referred to R. Krishnamurthy v. S. Parthasarathy (AIR 1949 Mad 780 : (1949) 1 MLJ 412) reversing the decision in the same case reported in Parthasarathy v. Krishamoorthy (AIR 1949 Mad 387 : (1948) 2 MLJ 391). The appellant landlord had filed an eviction petition under the Rent Control Act without giving notice under Section 111(h) of the Transfer of Property Act (which, in those, days, was considered to be a condition precedent even to the filing of an eviction petition under the Rent control Act) and obtained an order of

eviction. In these proceedings no contention had been raised by the tenant on the non-issue of the notice under the Transfer of Property Act. An appeal by the tenant also failed but here again the above point was not taken. Thereafter the tenant filed a suit for a declaration that the order of the Rent Controller was ultra vires in that no notice to quit had been given as required by law. This plea was upheld by the learned Single Judge but was rejected in appeal. The Division Bench observed : (AIR pp. 782-83, para 9)

> "..... We agree with the learned Judge that this Court can entertain a suit to set aside an order of the Rent Controller if the Rent Controller exceeded the powers conferred on him. A court or tribunal can, however, he said to have no jurisdiction to entertain a suit or application only if it has no jurisdiction with regard to the subject matter of the suit, or application ... But even these rules are subject to the qualification that if the jurisdiction of the court depends upon the ascertainment of facts and the court, upon the facts found, holds that it has jurisdiction, then the decree of that court cannot be in collateral proceedings."

After reference to certain other decisions of the court, it was observed : (AIR pp. 783-84, para 9)

> "If a lessor brings a suit for eviction, he is to prove the existence of a lease, the relationship of lessor and lessee between himself and the defendant and the determination of the lease. If he fails to prove this, the plaint is no returned because the suit is one which the court has no jurisdiction to entertain; but the suit is dismissed as revealing no cause of action .... In a suit by a landlord against his tenant for eviction, the determination of the tenancy is merely one of the constituent of the cause of action that the landlord has to prove against his tenant in order to succeed in the suit. We are of opinion that a tenant can waive notice to quit; but even if he cannot, notice has not to be proved as a condition precedent to the institution of the suit ... Mr. Srinivasa Ayyanagar concedes that if a landlord filed a suit in ejectment and failed to say that the tenancy had been determined, the court would dismiss the suit and not return the plaint. In the same way, the Rent Controller would have to dismiss the application if it were not alleged in the affidavit that notice had been given or if it found, upon hearing the parties and considering the evidence, that notice had not been given. It would follow from this therefore, that if notice to quit was necessary it would be merely one of the issues to be decided by the Rent Controller and would not in any way affect his jurisdiction to entertain the application. That being so, if the Rent Controller did not decide that question properly, the matter would have to be raised in appeal to the Court of Small Causes and would give this Court no jurisdiction to entertain a suit by the defeated party; for such a suit would be barred by Section 12(4) of the Act."

16. Again, in Manibhai Hathibhai Patel v. C. W. E. Arbuthnot (AIR 1947 Bom 413 : 49 BLR 454), a writ petition was filed to challenge the validity of an order passed by the Rent Controller on the ground that the circumstances for the invocation of Section 13(b) of the Bombay Rent. Hotel Rates and Lodging House Rates (Control) act, 1944 had not been fulfilled. It is sufficient for our present purposes to extract the observations in paragraph 16 of the judgment; (AIR p. 423)

> "It was sought to be argued on behalf of the petitioners that the respondent had no jurisdiction to determine the question as to whether the premises were at one time let out as a whole and then let out in parts as was sought to be contended by the

> applicants ... The jurisdiction of the Rent Controller, ... is a statutory jurisdiction which is vested in the Rent Controller by the terms of the Act itself. A regular tribunal is established by the Act which functions in those cases where the standard rent of the premises as laid down in Section 3 of the Act exceeds Rs. 80 per month. The tribunal owes its existence to the Act and not to any act of the parties, and it has, therefore, jurisdiction to determine what are the cases which fall within its jurisdiction. If there is any dispute which arises between the parties as to whether the particular application falls within the jurisdiction of the tribunal, it is the tribunal which is competent to decide that dispute and determine whether the particular matter falls within its jurisdiction. If the tribunal decided it wrongly, there is an appeal provided against its decision. It cannot, therefore be contended as the petitioners have done, that the respondent has not jurisdiction to determine the question as to whether the premises were at one time let out as a whole and then let out in parts as contended by the applicants."

Shri Iyer submits that the appellants case here is on a stronger footing than in the two decisions cited above because here, in the earlier proceedings before the Rent Controller and the Court of Small Causes, a specific point had been taken that the tenant was only a tenant of the land and not of the premises (which belonged to him) and that this contention had been specifically overruled by the appellate court after a consideration of the relevant material. Sri Krishnamoorthy Iyer also contended that even if it may be an arguable question as to whether the decision in the earlier petitions constitutes res judicata or not and it may plausibly be argued that it does not constitute res judicata, the question for our consideration really is whether the order passed in the earlier eviction petitions can be treated as a nullity being passed by a court totally without jurisdiction. He submitted that if the tenants had filed a suit for declaration that the order passed in the earlier proceedings as a nullity that would have been bound to fail. Shri Iyer also relied on certain observations of this Court in the decisions reported as Rai Brij Raj Krishna v. S. K. Shaw (1951 SCR 145, 147, 150 : AIR 1951 SC 115), Official Trustee v. Sachindra Nath Chatterjee, ((1969) 3 SCR 92, 99, 100 : AIR 1969 SC 823), A. R. Antulay v. R. S. Nayak ((1988) 2 SCC 602, 649, 677, 700 : 1988 SCC (Cri) 372), Trideshwar Dayal v. Maheshwar Dayal ((1989) 2 Scale 1436, 1437) and Shiv Chander Kapoor v. Amar Bose ((1990) 1 SCC 234, Paras 22 & 23).

17. Shri K. Parasaran, appearing for the respondents, sought to support the High Court's judgment on various grounds. He contended that, even if the arguments on behalf of the appellant were to be accepted, the appellants were not entitled to succeed, for the following reason. He drew our attention to the reference in the 1967 order of the Court of Small Causes to H.R.C. No. 867 of 1963, an earlier petition filed by the LIC. The Court has said :

> "7. The Corporation had formerly filed a petition H.R.C. No. 867 of 1963 in respect of these two buildings for fixation of fair rent. In that petition the tenant disputed the title of the Corporation in respect of the buildings. So, the Corporation immediately filed an application H.R.C. No. 2557 of 1964 for eviction on the ground of wilful denial of title. The petition for fixation of fair rent was dismissed by the learned First Additional Rent Controller on the ground that the lease has been taken under two separate deeds and that a single petition was not maintainable. In the petition the ordered eviction on the ground that the denial was not bona fide. He gave an express finding that the building No. 2 Mount Road belongs to the Corporation. In the appeal the appellate court set aside the order of eviction on the ground that there was no denial of title prior to the institution of the petition. Of course, the finding in that

> case that the building belongs to the Corporation cannot operate as res judicata because the tenant has no opportunity to file an appeal against that finding since the application for eviction had ultimately been dismissed. On this point I find that the building belongs to the petitioner."

He submitted that the court erred in thinking that no further proceedings had been taken in the earlier matter. The fact was that a civil revision petition (C.R.P. No. 1839 of 1966) had been filed against the order of the appellate court (H.R. A. No. 1162 of 1964). The C.R.P. had been allowed and the matter remitted back for fresh disposal. When the matter came back to the Court of Small Causes, the learned Judge, in his order dated April 9, 1969, went into the issue at length and came to the conclusion that the superstructure belonged to Indian Automobiles and had not been conveyed to the LIC. He held, therefore, that the claim by India Automobiles in the eviction petition of title to the superstructure would amount to a denial of title but that the denial was bona fide. He therefore, allowed the appeal and set aside the order of eviction passed against the tenants. Shri Parasaran, therefore, submitted that the question of title had already been decided in these earlier proceedings which we shall briefly refer to as the 'first set of proceedings'. If at all, he says, it was this decision that constituted res judicata and the Court of Small Causes, in H.R.A. No. 534 of 1966 arising out of H.R.A. No. 3310 of 1964 (which we shall refer to as the 'second set of proceedings') could not have considered the issue again or taken a different view.

18. Sri Parasaran also sought to explain the reasons why the respondents did not prefer any appeal or revision from the order of the court of Small Causes in H.R.A. No. 534 of 1966. He submitted that the law then prevalent in Tamil Nadu as laid down in the decisions of the Madras High Court in M.P.S. Palaniappa Chettiar v. VE. S T. Vairavan Chettiar ((1963) 76 LW 21 : (1963) 1 MLJ 130) and Palaniappa Chettiar v. Babu Sahib alias Sheik Mytheen Sahib ((1964) 77 LW 551) was that the Rent Control Act would apply even in cases where the landlord had leased out only a vacant site and the tenant had put up his own constructions thereon. It was only in A. R. Salay Mohamed Sait v. Jaffer Mohammed Sait's Memorial Dispensary Charity ((1969) 1 Andh WR 16 : (1969) 1 SCWR 602 : 1969 Ren CR 322 : (1969) 1 MLJ (SC) 16) that this view was disapproved. At that stage, therefore the respondents could not have hoped to succeed even if their stand that they were the owners of the superstructure had been accepted.

19. We do not think that these contentions have any forces. So far as the first contention is concerned, it may be pointed out, firstly, that an answer to it is furnished by the terms of Section 19 of the Act (set out a little later) which does not contain a reference to Section 4. The application under Section 4 could not therefore have been summarily rejected even assuming that the question of title could be said to have been substantially in issue and decided in the previous proceeding. Secondly, the order now relied upon was passed in April 1969 and was not in existence when the Court of small causes passed in its order in the second set of proceedings. Thirdly, even assuming the argument of learned counsel to be corrects, all that can be said is that, in the second set of proceedings the tenants could have contended that it was not open to the Court of Small Causes to go into the question of title in view of the decision in the first set of proceedings. But no such plea was taken before it with the result that the court discussed the matter and arrived at a decision. In deciding whether the decision constitutes res judicata or not, we are not entitled to go into the correctness of that decision. Right or wrong, the second decision has become final and the same issue, says the appellant cannot be gone into again. Lastly, the 1969 decision of the Court of Small Causes was only concerned with the question whether there was denial or the LIC's title by the tenants and, if so, whether it was bona fide. It was only this limited aspect - eviction on the ground of non-bona fide fide denial of title - that was under consideration of the court under Section

10(2)(vii) of the Act read with the proviso to Section 10(1) and the Court's observations on the question of title were one on a collateral issue. We do not, therefore, think that the 1969 decision can be an effective answer to the appellant's contention based on the 1967 decision The second argument, explaining why the respondents did not challenge the 1967 order in further appeal or revision, is also of no avail in considering the issue raised by the counsel for the appellant

20. But we think Sri Parasaran is right in the third contention urged by him before us which goes to the root of the matter. His argument is that a Rent Controller and, on appeal from him, the Court of Small Causes, is (sic are) not competent to go into a question of title to immovable property and that a civil court cannot be barred from examining a claim of title merely because the question may have had to be considered by the rent tribunal as a collateral issue in deciding certain applications before. them. He contended that it is a basic proposition, well settled by authority, that a tribunal of limited jurisdiction like the Rent Controller (this expression will, hereinafter, also include a Court of Small Causes disposing of an appeal from him) cannot be clothed with jurisdiction to decide far-reaching questions of title to immovable property. This, he said, is a proposition that is borne out on general principles as well as on the provisions of the Rent Control Act. Taking up the provisions of the Act, he referred us to the provisions of Sections 10 and 19 which read thus :

> "10. Eviction of tenants. - (1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or Section 14 to 16 :
>
> Provided that nothing contained in the said sections shall apply to a tenant whose landlord is the government :
>
> Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction on any of the grounds mentioned in the said sections, notwithstanding that the court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.
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19. Decisions which have become final not to be reopened. - Any application under Section 3-A or Section 12, and any application under sub-section (2) or sub-section (3) or sub-section (3-A) of section 10 or under Section 14, 15 or 16, shall be summarily rejected by the authorized officer or the Controller, as the case may be, if such application raises between the same parties or between par ties under whom they or any of them claim, substantially the same issues as have been finally decided or as purport to have been finally decided in a former proceeding -

> (i) under this Act, or
>
> (ii) under any other law from time to time in forces before the date of the commencement of this Act and relating to matters dealt with in this Act."

Counsel contended that Section 10 makes it clear beyond doubt that the Rent Controller is precluded from deciding any issue regarding title to the property and that, if any such question arises, he should leave it to be decided by ordinary civil courts in appropriate proceedings. The procedure to be adopted by him in disposing of the applications before him is a summary one hardly conducive to

a satisfactory disposal of such complicated questions. Under Rule 12(2) he is required to decide applications by recording a brief note of the evidence of parties and witnesses and decide matters after giving the parties an opportunity to state their case : more or less, in the manner in which a Court of Small Causes decided cases before it. Indeed, in the presidency Town, he is subordinate to the court of small causes which has been notified as the authority to here appeals from his orders and it is well settled proposition that the Court of Small Causes is not competent to adjudicate on questions of title. For these reasons, learned counsel submits, the decision of the Court of Small Causes in the earlier proceedings cannot fetter a civil court from adjudicating upon all the issues arising before it is a civil suit.

21. We think that this contention is well founded. There are clear indications in the Act and rules that the Rent Controller does not have the jurisdiction to decide questions of title. In a proceeding under the Act, Whether it be for fixation of fair rent or eviction, the tenant may raise several objections. He may, inter alia, take up the point that the opposite party is not the "landlord". The definition of "landlord" under the Act is very wide and encompasses not only an owner but also persons "receiving or entitled to receive the rent of the building which has been let out or would be entitled to receive the rent of the building if it were let out to a tenant" in one of several capacities. Denial of title of the landlord is itself one of the grounds on which eviction can be sought [Section 10(2) (vii)]. Sri Krishnamurthy Iyer is, therefore, certainly right is contending that the Act required the Rent Controller to consider this issued, among others, while disposing the applications before him. But, we think, Sri Parasaran is right is saying that, since the Rent Controller has no jurisdiction to entertain an application except by a landlord or a tenant, the question of title to the property is one on which his very jurisdiction depends. It cannot be described as a matter that is squarely and directly in issue in these proceedings to which any finality can be attached, as the Rent controller, by deciding the issue wrongly, cannot clothe himself with jurisdiction where none exists. All that the Rent controller has to do is to satisfy himself that the person seeking eviction or fixation of fir rent is a "landlord" who has, prima facie, the right to receive the rents of the property in question. That the Rent controller's jurisdiction on this issue is limited is clear from the proviso to Section 10(1) of the Act. In order to decide whether the denial of the landlord's title by the tenant is bona fide, the Rent Controller may have to go into the tenant's contentions on the issue by he is not to decide the question finally. He has only to see whether the tenant's denial of the landlord's title is bona fide in the circumstances of the case. He may reach a conclusion, on the merits, that the landlord has title; yet he cannot order eviction if the tenant's action in denying the title was bona fied. Per contra, he may reach the conclusion on the materials before him that the landlord has no title; yet, it seems if he finds that the applicant if otherwise a landlord and that the grounds on which the tenants denial was based were not bona fide, he will have to order eviction; So also, in an application under, section 4, the jurisdiction of the Rent controller is to determine a fair or standard rent for the Premises. He has no doubt to ensure that the person applying for the fair rent is the tenant or the landlord. He has also no doubt to satisfy himself as to the extent of the premises qua which the relationship of landlord and tenant exists and in respect of which rent is receivable or payable. For deciding these issues, he may have no doubt also to consider the oral and documentary evidence adduced by the parties. Yet, having regard to the manner in which he is required to come to this conclusion and having regard to the fact that at least in the Presidency Town an appeal from his order goes to the Court of Small Causes, it is difficult to escape the conclusion that the jurisdiction to be exercised by him is a limited and a prima facie one. It will be anomalous to hold that where an owner of property seeks to evict his tenant under Section 10(2)(vii) but the Rent Controller refuses to pass the order of eviction - though satisfied about his title - because the tenant had acted bona fide, it would be open to the owner to seek eviction by having his title adjudicated upon in a civil

court but that the owner cannot have a similar right in the matter of recovery of rent which is basically a relief for which he has to approach a civil court. A question of title may be a complex one involving difficult issues. For instance, the "owner" may claim title under an adoption or a will or a trust deed or a gift deed and there may be contentious claims among several persons which it will not be possible for the Rent Controller to decide. It is important to remember that when an owner files a suit for arrears of rent, it is open to the tenant, under the general law, to plead that no rent is payable in respect of the premises as, indeed, it belongs to him. The right to raise this issue cannot be taken away without a specific statutory provision. The terms of Section 11 CPC, including Explanation VIII, are not comprehensive enough to cover the case.

22. The limited nature of the jurisdiction of a Tribunal like the Rent Controller and the Court of Small Causes has been considered in a numbers of cases by this Court as well as other courts :

> (1) We may start with an early Full Bench decision of the Madras High Court : Pollapalli Venkatarama Rao v. Musunuru Venkayya (AIR 1954 Mad 788 : 67 MLW 354). It arose under the Madras Estates Land Act (1 of 1908. In that case, the Revenue Divisional Officer, in certain earlier proceedings, had held that a particular village was not an "estate" and this had been confirmed by the District Collector and the High Court. Later on, the plaintiffs filed suits against the tenants in possession of holdings in the village for an injunction restraining them from removing the paddy heaps standing on the suit lands until a due division was made of the crop and until the rent in kind payable to the plaintiffs was paid by the tenants. The tenants wanted to contend in reply that the village in question was an "estate" within the meaning of the Act and they had occupancy rights therein. The plaintiffs, however, objected that this plea was not open to the tenants in view of the earlier decision of Revenue Divisional Officer. Negativing the plea of the plaintiffs, the court pointed out; (AIR pp. 790-91, para 8)
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> "If a particular matter is one which does not fall within the exclusive jurisdiction of the revenue court then a decision of a revenue court on such matter, which might be incidentally given by the revenue court, cannot be binding on the parties in a civil court. One practical test would be to determine if that particular matter would not be a matter in respect of which the civil court would have jurisdiction. To give an obvious instance, suppose in a suit under Section 55 for the grant of a patta instituted by a person claiming to be the adopted son of the ryot who was a pattada; the landlord raises a plea that he is not entitled to the patta because his adoption is not valid. It may be that the revenue court would have to summarily go into the question whether the person suing is or is not the validity adopted son of the previous ryot. Can it possibly he said that the finding of the revenue court on the issue of adoption is binding on the parties in a subsequent suit in a civil court in which the validity of the adoption might fall to be decided ? There can be no doubt about the answer.
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> That is because the dispute as to the validity of the adoption is not a dispute in respect of which a revenue court has exclusive jurisdiction. Such a dispute is a matter well within the jurisdiction of a civil court. Therefore, it cannot be within the exclusive jurisdiction of the revenue court, and the decision of such a dispute by a revenue court cannot be finding in a civil court."

Incidentally it may be pointed out, this decision has been cited with approved by this Court in

Bhagwan Dayal v. Reoti Devi. ((1962) 3 SCR 440 : AIR 1962 SC 287).

(2) Desika Charyulu v. State of Andhra Pradesh (AIR 1964 SC 807) was a decision under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. In that case it was held, on a construction of Section 9(1) of the Act, that the property in question being an "inam village" is assumed as a fact on the existence of which the competence of the Settlement Officer to determine the matters within his jurisdiction rests and that as there are no words in the statute empowering him to decide finally the former, he cannot confer jurisdiction on himself by a wrong decision on this preliminary condition to his jurisdiction. Any determination by him of this question, therefore is (subject to the result of an appeal to the tribunal) binding on the parties only for the purposes of the proceedings under the Act, but not further. The correctness of that finding may be questioned in any subsequent legal proceeding in the ordinary courts of the land where the question might arise for decision. However, if the property is an inam village, whether the "inam village" is an "inam estate" is within his exclusive jurisdiction and in regard to it the jurisdiction of the civil courts is clearly barred.

(3) Dhulabhai v. State of M. P. ((1968) 3 SCR 662 : AIR 1969 SC 78) was concerned with the interpretation of the provision in the Madhya Bharat Sales Tax Act barring the jurisdiction of civil courts in matters entrusted to the jurisdiction of the special tribunals created under the Act. It is unnecessary to refer in detail to this case except to set out a passage from pages 682-83 where Hidayatullah, C.J. speaking for the Constitution Bench, reviewed all earlier cases on the subject and enunciated the principles emerging therefrom, of which the following are relevant here : (SCR p. 682)

"The result of this inquiry into the diverse views expressed in this Court may be stated as follows :

(1) Where the statute gives a finality to the orders of the special tribunals the civil courts jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not."

(4) In Mathura Prasad Bajoo Jaiswal v. Dossibai N. B. Jeejeebhoy ((1970) 1 SCC 613 : (1970) 3 SCR 830) the appellant had obtained lease of an open land for construction of buildings. After putting up the buildings, he applied for determination of standard rent under the Bombay Rents. Hotel and Lodging House Rates Control Act, 1947. The application was rejected holding that the provisions of the Act did not apply to open land let for construction. This view was confirmed by the High Court. Some time thereafter in another case the High Court held that the question whether the provisions of the Act applied to any particular lease must be determined on its terms and a building lease in respect of an open plot was not excluded from the provisions of the Act solely because open land may be used for residence or educational purposes only after a structure is built thereon. Relying upon this judgment, the appellant filed a fresh application for determining the standard rent. The trial Judge rejected the application holding that question of the applicability of the Act was res judicata since it had been finally decided by the High Court between the same parties in respect of the same land in the earlier proceeding for fixation of standard rent. The order was confirmed by the first appellate court and on further appeal by the High Court. The Supreme Court, however, reversed the judgment of the High Court. The Court observed : (SCC p. 619, para 10)

"A question relating to the jurisdiction of a court cannot be deemed to have been finally determined by an erroneous decision of the court. If by an erroneous interpretation of the statute the court holds that it has no jurisdiction the decision will not, operate as res judicata. Similarly by an erroneous decision if the court assumes jurisdiction which it does not possess under the statute, the decision will not operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or other wise."

(5) Gangabai v. Chhabubai ((1982) 1 SCC 4 : (1982) 1 SCR 1176) related to the jurisdiction of the Court of Small Causes. In that case the respondent, being in need of money entered into an agreement with the appellant for a loan of Rs. 2000 and it was simultaneously decided that she should execute a nominal document of sale and rent note of her house. These documents were executed on January 7, 1953, but the respondent continued in the possession of the house property throughout. The appellant was attempting to enforce the document as a sale deed by filing suits in the Court of Small Causes for recovery of rent and the said suits had resulted in decrees. The respondent thereupon filed a suit for a declaration that she was and continued to be owner of the house property, alleging that the documents executed on January 7, 1953, were never intended to be acted upon. The appellant in defence maintained that the sale deed represented a genuine transaction and ownership of the house property had passed to her. It was pleaded that the decrees passed by the Court of Small Causes operated as res judicata barring the respondent from pleading that the sale deed was merely a nominal transaction. Reliance was also placed on Section 92 of the Indian Evidence Act. The High Court held that the sale deed and rent note were sham documents, that the decrees of the Court of Small Causes did not operate as res judicata and that Section 92 of the Indian Evidence Act did not preclude the respondent from establishing the true nature of the transaction. The Supreme Court dismissed the appeal. In regard to this contention it was urged on behalf of the appellant that the High Court erred in applying the statutory provisions of Section 11 of the Code of Civil Procedure and that it should have invoked the general principles

of res judicata. It was submitted that it was necessary to find out whether the Court of Small Causes was competent to try the two earlier suits and decide the issues arising therein. After referring to various decisions cited on behalf of the parties, the court observed;) SCC p. 9, (para 9)

"It seems to us that when a findings as to title to immovable property is rendered by a Court of Small Causes res judicata cannot be pleaded as a bar in subsequent regular civil suit for the determination or enforcement of any right or interest in immovable property. In order to operate as res judicata the findings must be one disposing of a matter directly and substantially in issue in the former suit and the issue should have been heard and finally decided by the court trying such suit. A matter which is collaterally or incidentally in issue for the purpose of deciding the matter which is directly in issue in the case cannot be made the basis of a plea of res judicata. It has long been held that a question of title in a small cause suit can be regarded as incidental only to the substantial issue in the suit and cannot operate as res judicata in a subsequent suit in which the question of title is directly raised .... Our attention has been drawn to Explanation VIII to Section 11 in the Code of Civil Procedure recently inserted by the Code of Civil Procedure (Amendment) Act, 1976. Section 97(3) of the Amendment Act declares that the new provision applies to pending suits, proceeding, appeals, and applications. In our opinion the Explanation can be of no assistance, because it operates only where an issue has been heard and finally decided in the earlier suit."

(6) We may next refer to Jeeth Kaur v. Smt. P. Kondalamma (AIR 1983 AP 219 : 1983 Ren CR 162 : (1983) 2 Andh WR (HC) 1). In that case, the tenant filed a petition under the relevant Rent Control Act for permission to deposit rents to court. The landlady denied any relationship of tenant and landlord between the applicant and herself. This contention was upheld by the appellate court and the High Court. In a subsequent suit filed by the tenants in the civil courts as tenants of the suit building, the landlady contended that the earlier decision operated as res judicata, but this contention was negatived. The court observed :

"The main relief sought for by the tenants was for depositing the rents on the ground that the landlord refused to receive the same. In order to give that relief, the Rent Control Court must first have jurisdiction as it can adjudicate disputes only between a landlord and a tenant. Since the relationship is denied by the landlord, the Rent Controller had decided that question incidentally. This is not the main relief for which the application is filed. In fact, it is not a dispute which is exclusively triable by the Tribunals under the Act. The dispute has to be decided as incidental to the granting of the main reliefs. The necessary condition for exercise of jurisdiction by the Rent Controller is the existence of relationship of landlord and tenant. The rent authorities have no power to decide a dispute which is not between a landlord and tenant. Therefore, the decision on the question whether the relationship of landlord and tenant exists is a decision regarding jurisdictional facts and such a decision is neither conclusive nor final. In such circumstances, the jurisdiction of the civil court to entertain a suit in which the question of jural relationship of the landlord and tenant arises is not ousted. Since the said decision is not final it can never operate as res judicata between the parties. In fact if we examine the provisions of the Act, there are only five reliefs that can be granted under the Rent Control Act. One is fixation

of fair rent and increase thereof under Section 8(5) the third is to order eviction under Section 10; the fourth is to direct recovery of possession by the landlord for repairs under Section 12 and the fifth is to order restoration of amenities when they are unjustly withheld, under Section 14 of the Act. The rent authorities cannot grant the reliefs of declaration of occupancy rights."

(7) We may lastly refer to the decision of this Court in State of Tamil Nadu v. Ramalinga Samigal Madam ((1985) 4 SCC 10). In that case the plaintiff-respondent claimed title to the suit land on the basis of its long and uninterrupted possession since prior to 1938 and also under an order of assignment of 1938 issued in its favour by the zamindar whereby the right to cultivate in respect of that land was granted to it subject to the payment of certain amounts. In 1953 the plaintiff applied for a ryotwari patta in respect of this land after the abolition of the estate but the Additional Settlement Officer, by an order dated June 25, 1954, took a decision that land was not a ryoti land but had been registered as a poramboke (village communal land) and, therefore, no one was entitled to ryotwari patta in respect of that land. The plaintiff thereupon field a suit for a declaration of its title and right to continue in possession and enjoyment of the suit land subject to payment of ryotwari or other cess to be imposed by government without any interference from the government. The State of Tamil Nadu resisted the suit on merits by contending that the suit land was communal land and that the assignment or grant by the zamindar in favour of plaintiff was invalid. It also took a technical plea that the decision of the Additional Settlement Officer that the suit land was poramboke and not 'ryoti' land was final and the civil court's jurisdiction to decide that question was barred under Section 64-C of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1984, which ran as follows :

"64-C. Finality of orders passed under this Act. - (1) Any order passed by the government or other authority under this Act in respect of matters to be determined for the purposes of this Act shall, subject only to any appeal or revision provided by or under this Act, be final.

(2) No such order shall be liable to be questioned in any court of law."

The State Government's plea was rejected by the High Court. In appeal, the State contended before this court that every refusal of a ryotwari patta by a settlement Officer in an inquiry under Section 11 involves a decision on his part that either the applicant is not a ryot or the land is not ryoti land; in the instant cases it was the latter and such decision on the nature or character of the land has been given a finality under Section 64-C which cannot be questioned in court of law. Therefore, it was urged that the civil court's jurisdiction to adjudicate upon the nature or character of the suit lands must be held to have been excluded or ousted. After discussing several decisions in regard to the exclusion of a civil court's jurisdiction as well as the provisions of the Act, the court pointed out that the terms of Section 64-C alone will not be decisive on the point of ouster of the civil court's jurisdiction. The observations made by the court in paras 13 and 14 have relevance to the present case and need not be set out here in extenso.

23. We are of opinion, in the light of the decided cases referred to above, that the contention on behalf of the respondents has to be accepted. We are concerned with the jurisdiction of a civil court. The extensive jurisdiction conferred on civil courts under Section 9 of the Code of Civil procedure

should not be curtailed without a specific statutory warrant or except on some clear principle. There is nothing in the Tamil Nadu Rent Control Act which in any way, takes away, or narrows down, the civil court's jurisdiction as, for example, there is in the Delhi Rent Control Act (Section 50). As to principle, whether we look at it on the analogy or res judicata or adopt the approach of Sri Iyer as to whether the order in the earlier proceedings is to be treated as an order that is null and void or merely one that is valid until set aside, the answer has to turn on the true nature and scope of the jurisdiction conferred on the Rent Controller under the Act. Is it possible, we have to ask our selves, having regard to the context, scheme and terms of the legislation, that the statute could have envisaged the Rent Controller (and the authorities to whom appeal or revision could be preferred from his orders) to be final authorities to adjudicate on issues of title also ? The answer, in our opinion, has to be in the negative. Section 4 of the Rent control Act, as already pointed out, provides only a machinery for fixation of fair rent in respect of certain premises. It is the quantum of fair rent that arises for determination by the Rent Controller. There is no doubt that since an application for this purpose cannot lie except at the instance of a landlord or a tenant, the Rent Controller has to deal with this incidentally but this is not one of the direct issues before the Rent controller. If, and only if, this relationship exists between the parties, the Rent Controller steps in for a limited purpose - to determine what the fair rent is - and then fades out of the picture. Where a fair rent is fixed by a controller, the Rent Control Act does not provide for a machinery for recovery of the amount. The amount has to be recovered by the land lord only by recourse to a civil court. This gives an indication that the determination of the relationship that gives rise to the application is also not conclusive. This is indeed made clear by the provisions relating to eviction. We have already referred to the effect of the provisions of Section 10(2)(vii) read with the proviso to Section 10(1) and pointed out how jurisdiction to decide questions of title is denied to the Rent Controller. The position cannot be different under Section 4. Having regard to the much narrower scope of Section 4, it would be anomalous to read a wider jurisdiction to the Rent Controller thereunder than under Section 10. In our opinion, on a proper construction of the Rent Control Act, the question on which the jurisdiction of the civil court is excluded is only the determination as to the fair rent of the premises. If the civil court in this case had come to the conclusion that there is a relationship of a landlord and a tenant and that the LIC was entitled to recover the rent from the tenants, it will have to pass a decree in favour of the LIC on the basis of the fair rent fixed by the Rent Controller and, therefore, impliedly excluded from the purview of the civil court. But his decision is not final on the issue that opens up his jurisdiction and cannot preclude an owner from contending, in a civil court, that he should not be asked to pay rent for his own property to someone else.

24. For the reason mentioned above, we are of the opinion that the High Court reached the correct conclusion and that this appeal has to fail. The appeal is therefore dismissed. In the circumstances, however, we make no order as to costs.

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